

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

BERTHA BALTAZAR o/b/o  
C.B.

PLAINTIFF

v.

CIVIL NO. 05-2153

JO ANNE B. BARNHART, Commissioner  
Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

Plaintiff Bertha Baltazar, brings this action on behalf of her minor daughter, C.B., seeking judicial review, pursuant to 42 U.S.C. § 405(g), of a decision of the Commissioner of the Social Security Administration (Commissioner) denying C.B.'s application for child's supplemental security income (SSI) benefits under Title XVI of the Social Security Act. The defendant filed an Answer to plaintiff's action on January 3, 2006, asserting that the findings of the Commissioner were supported by substantial evidence and were conclusive. (Doc. # 5).

On February 24, 2006, the Commissioner, having changed positions, filed a motion requesting that plaintiff's case be remanded pursuant to "sentence four" of section 405(g) in order to conduct further administrative proceedings. (Doc. # 7). The defendant states that upon remand, the ALJ will be instructed to consider whether C.B.'s asthma meets or equals the severity requirement of Listing 103.03, update the record from all of C.B.'s treating sources, and request medical source statements from these sources on C.B.'s ability to interact and relate to

others. The ALJ will also further evaluate and clarify his findings regarding C.B.'s ability to interact and relate with others and how it differs from the opinion of the consultative physician.

The exclusive methods by which a district court may remand a social security case to the Commissioner are set forth in "sentence four" and "sentence six" of 42 U.S.C. § 405(g). A remand pursuant to "sentence six" is limited to two situations: where the Commissioner requests a remand before answering the complaint, or where the court orders the Commissioner to consider new, material evidence that was for good cause not presented before the agency. The Fourth sentence of the statute provides that "[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g); *Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993).

Here, we find remand for the purpose of the ALJ to further evaluate the evidence as addressed above, appropriate.

Based on the foregoing, we find remand appropriate and grant the Commissioner's motion to remand this case to the Commissioner for further administrative action pursuant to "sentence four" of section 405(g).

DATED this 21<sup>st</sup> day of March 2006.

/s/ Beverly Stites Jones  
HON. BEVERLY STITES JONES  
UNITED STATES MAGISTRATE JUDGE